**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETITION NO.31821 OF 1998**

Between:

J.Kanaka Durga D/o.J.Kumara Swamy

…Petitioner

vs.

S.C.Womens Degree College, Kothagudem, Khammam District and five others.

..Respondents

**THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

**WRIT PETITION NO.31821 OF 1998**

**ORDER**:

The petitioner a Lecturer in the 1st respondent – S.C,Womens Degree College, Kothagudem, administered by the 4th respondent Company, assails the selection held on 18.11.1997 for the post of the Principal of the R-1 College whereat the 5th respondent was selected. She also seeks a declaration that the post of Principal is to be filled up on the basis of merit; a direction to the respondents to review the selections already held to the post of Principal on 18.11.1997 and to make selections to the said post on merit basis.

Initially five respondents were impleaded in the writ petition – the college concerned; the Commissioner of Collegiate Education, AP; the State of Andhra Pradesh represented by the Secretary, Education Department; the Singareni Collieries Company Limited and Smt. V. Kasturi, respectively. Later the Kakatiya University was impleaded as the 6th respondent pursuant to the order of this court dt 12.9.2000.

**The petitioner's claim:**

Appropos the permission granted by the State Government, the 4th respondent-Company started the R-1 Degree College and Junior College in 1975. It issued an advertisement calling for applications for several posts including of Lecturers in various faculties. The petitioner applied for the post of Lecturer in Telugu and was selected in 1975. According to the petitioner there was a dispute as to the date from which her seniority should be reckoned (in the category of Lecturer) and pursuant to the judgment of this court in W.P. No. 10771/95 dt 8.7.1997, she was assigned seniority at Sl.No.3 amongst the Lecturers of R-1 College.

On 18.11.1997 selections were held for the post of Principal. The petitioner was also considered but the 5th respondent was selected. The petitioner claims that in view of the Government Memo No. 89/CE-III-1/95-1, dt 27.1.1995 read with G.O.Ms.No. 127,

Education, dt 7.6.1993, three senior Lecturers have to be considered for the post of Principal and as per the orders in G.O.Ms.No. 158 Education (U.E.), dt 10.6.1987, preference should be given to candidates having a Ph.D. Degree. The petitioner contends that except her, the other two candidates considered at the selection on 18.11.1997 do not possess a Doctorate qualification. Therefore in view of the orders in G.O.Ms. No. 158 she ought to have been preferred for the appointment. The petitioner also contends that the post of Principal is a selection post but not a seniority post. This being the position, contends the petitioner, her academic record, performance, higher merit qualifications, research work, publications and awards earned as a Lecturer should be considered in making selections. According to the petitioner she is of superior merit vis-à-vis the 5th respondent on all these aspects. She also claims to have been awarded the best teacher award in 1994 by the State Government. The petitioner urges that the 5th respondent does not have a comparable service record.

The petitioner submitted several representations for reviewing the selections held on 18.11.1997, on 7.10.1998, 8.10.1998 and 30.10.1998. Even earlier to the selections on 15.9.1997 she represented that selections should be based on merit. The petitioner contends that the selection of the 5th respondent is illegal and unsustainable and therefore seeks the reliefs already adverted to.

By way of an affidavit accompanying WPMP No. 21028 of 2000 the petitioner sought leave of this court to urge additional points to supplement those pleaded in the writ petition. In this affidavit the petitioner states that while she has a Ph.D. qualification the candidate selected as the Principal – R5, has a mere PG Degree with 53% marks while the rules prescribe that one must have a PG qualification with 55% marks. According to the petitioner the 6th respondent – University, in exercise of powers under the AP Universities Act issued proceedings dt 20.7.1992 prescribing qualifications for the post of a Principal. The prescribed qualifications are a Master Degree, first or second division, the latter with not less than 55% marks or any qualification recognized by the University as equivalent thereto in one of the subjects for which provision exists in the college and instruction is imparted; and 8 years of teaching experience as a full time Lecturer in a Degree College. In exceptional cases, the university proceedings stipulate; a relaxation up to a maximum of 3 years could be given with the prior approval of the university. The

petitioner also asserts that as the above instructions (of the R6 University) specified the above qualifications for "selection of staff", the appointment to the post of Principal is by selection and not mere promotion from the post of Lecturer. As no relaxation is provided for educational qualifications while relaxation may be made in respect of the teaching experience qualifications, the petitioner contends, no relaxation of the educational qualifications or the requirement of having a Masters Degree in second division with a minimum 55% marks, could be made. In this affidavit the petitioner additionally pleads that she and the 5th respondent were appointed by the same order as Lecturers pursuant to the same selection process, the 5th respondent however joined duty earlier. Even at the time of selection while the petitioner was having a Masters Degree with distinction i.e., 70.7% marks, the 5th respondent acquired the Masters Degree with a mere 53% marks and was unqualified to hold the post of Lecturer unless exemption was granted. The 5th respondent therefore could not have been considered for appointment as Principal. The petitioner states that she was redesignated as a Reader by the order of the Management in proceedings dt 7/8-10-1996 w.e.f. 29.1.1994 and was also awarded Selection Grade on account of her total experience. As only Lecturers having Doctorate qualification could be designated as Readers and as she was given not only the selection grade but was also redesignated as Reader, she is entitled to preference over the 5th respondent a mere Lecturer, in the mater of selection to the post of Principal. The petitioner further pleads that as the post of a Principal in Government Colleges is a selection post, such post in an aided college cannot be treated as a non-selection post as the service conditions of Government teaching staff and aided teaching staff are identical and the scale of pay is also the same as is the age of superannuation.

**The response of the 4th respondent Company:**

A counter affidavit is filed on behalf of respondent No. 4 stating that selection for the post of Principal was held by a duly constituted Departmental Promotion Committee, three persons were initially screened and called for interview including the 5th respondent, the petitioner and another and the 5th respondent was selected and an appointment order issued in her favour. According to this affidavit all the relevant

Government Orders (relevant to promotion) were taken into account by the Committee. It is also stated that the 5th respondent was working as in-charge Principal on full additional charge from 1996 to 1998 and that no case is made out for interference with the selection and appointment of the 5th respondent as Principal of the R-1 College.

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**The 2nd and 3rd respondents' response:**

On behalf of respondents 2 and 3, a counter affidavit is filed stating that after the orders of this court in W.P. No. 10771/95 (filed by the petitioner herein), the 1st respondent constituted a DPC, which interviewed the three senior lecturers including the petitioner. The DPC resolved to promote R-5, the seniormost among the three candidates who appeared at the interview. The 2nd respondent approved the selection and the 1st respondent accordingly issued appointment orders. With regard to G.O.Ms. No. 158 dt 10.6.1989 it is averred that these Orders was followed by AP Collegiate Service Commission while recruitments even for private colleges were under the purview of the Commission. Later, the Government by Act 22 of 1990 excluded recruitment of staff of Private Colleges from the ambit of the Commission. Separate procedures vide G.O.Ms. No. 119, 12 and 127 and Government Memo No. 84/CEIII-1/95, dt 27.1.1995 were notified to regulate the recruitments of teaching and non-teaching staff. The DPC followed these Government Orders and selected the 5th respondent, the seniormost lecturer of the 1st respondent College as its Principal.

**The response and defence of the 6th respondent:**

The 5th respondent filed a separate counter affidavit. She contends that the reliance placed by the petitioner on G.O.Ms.No. 158 for claiming a preferential right for appointment as Principal (for possessing Ph.D.), is misconceived since the Government by G.O.Ms.No. 131 dt 29.5.90 clarified that lecturers who are appointed prior to 1.4.1976 shall be deemed to have been exempted from the qualifications

prescribed in items 1 and 2 if they possess first or second class degree in post graduation. This position was also clarified by the Commissioner of Collegiate Education by the letter dt 12.6.97. It is also pleaded that while redesignating Ph.D. holders as Readers under the Career Advancement Scheme in the 1986 revised pay scales of the University Grants Commission vide G.O.Ms.No. 520 Education, dated 15.12.1998, the beneficiaries had given an undertaking, as per the Commissioner of Collegiate Education's proceedings dt 16.5.94, that they would continue as lecturers and would not claim any promotion to the post of Principal based on the scale and redesignation as Reader without reference to their seniority and turn. It is further contended that mere possession of higher educational qualifications does not create any preferential right to claim promotion as Principal out of turn and that all relevant factors such as seniority, career record etc., have to be taken into account for such promotion and as the answering respondent has a better service record she was eligible for promotion as Principal. The 5th respondent additionally asserts that selection to the post of Principal is on the basis seniority and merit and she being the seniormost Lecturer in the R-1 college, the Promotions Committee had assessed her suitability and selected her, a selection not liable to be interfered with. It is also asserted that the preference to be accorded to Ph.D. qualification holders, prescribed in G.O.Ms.No. 58 dt 10.6.1987 is inapplicable as the orders in G.O.Ms.No. 158 are not in force in view of the orders in G.O.Ms.No. 127, dt 7.6.1993 and Ph.D. is not currently a preferential qualification. The relevant criteria for selecting a candidate for the post of Principal is seniority and merit and on an assessment of all relevant criteria the Selection Committee duly taking into account the higher seniority of the answering respondent had found her suitable and selected her as Principal.

Sri Jogaiah Sarma, the learned counsel for the petitioner vehemently contended that the post of Principal of a college is a selection post; the first three seniors amongst the Lecturers will have to be called for the selection and the more meritorious and qualified amongst them ought to be selected and that seniority is not a relevant criterion. Since the petitioner is more meritorious than the 5th respondent, the petitioner ought to have been selected and promoted as the Principal and if the petitioner were to be superceded, reasons have to be recorded for over-looking her. Since the appointment order of the 5th respondent is silent and bereft of any reasons

for overlooking the petitioner, the whole conduct is invalid and requires to be quashed, is the contention. The 5th respondent secured on 53% of marks in the Post Graduation and as such she is not even qualified to be appointed as Lecturer, much less as a Principal is the further contention.

The learned counsel for the 5th respondent on the other hand contends that the G.O. (G.O.Ms.No. 158) on which the petitioner relies for the contention that merit is the criteria for consideration to the post of Principal, was an order issued while appointments to private aided colleges were under the purview of the Collegiate Service Commission and later private aided colleges were excluded from its purview, and hence she, the senior most among the candidates appeared before the DPC ie., R5, was considered for promotion as Principal. It is also contended that lecturers who were appointed prior to 1.4.1976 were exempted from acquiring the requisite qualification vide G.O.Ms. No. 131, and as such it is not correct to contend that R-5 does not possess the requisite qualifications. In the absence of a requirement, no reasons need be recorded for overlooking the petitioner, contends the counsel for the 5th respondent.

As apparent from the rival pleadings and contentions the substantive grievance of the petitioner is to the selection of the 5th respondent as the principal of the R-1-Degree College. In the context of the competing positions the issues to be considered are-

1. Whether the 5th respondent was unqualified even to hold the post of Lecturer and therefore ineligible to be considered for promotions as Principal

2. Whether the petitioner is entitled to preferential consideration for selection to the post of Principal having regard to her Doctoral qualification – a qualification not possessed by the other competing candidates including R-5, in view of the Government orders in G.O.Ms.No.158 Education (U.E), dated 10-06-1987 and in Government memo No.89/CE-III-1/95-1, dated 27-01-1995

3. Whether selection to the post of Principal of an aided degree college ought exclusively to be on merit

4. Whether the selection committee of the 1st respondent was required to record reasons for selecting the 5th respondent while overlooking the petitioner

**ISSUES 1 AND 2**

These two issues can conveniently be considered together. The case of the petitioner on these issues is that even at the time the petitioner and the 5th respondent were selected ( as Lecturers) and appointed as such by the same order, the petitioner was having a Master's degree with distinction while R-5 obtained the said qualification with 53% of marks. R-5 is not qualified for being appointed as a Lecturer unless exemption was granted. Factually she was given the scale of Rs.700 - 1600 only after relaxation of qualifications. The petitioner was designated as a Reader by the orders of the Management dated 08-10-1996 with effect from 29-01-1994; was granted the selection grade; was designated as a Reader on account of her Doctoral qualifications; and since she was in the status of Reader was entitled to preference over R-5, a mere Lecturer in the matter of selection to the post of Principal.

The 5th respondent entered service into R-1 College as a Lecturer joining duty in the post, on 4-9-1975. In a writ petition filed 23 years after the appointment, the petitioner cannot be heard to challenge the validity of the 5th respondent's very appointment as a Lecturer, nor can she be permitted to contend at this distance of time, that the 5th respondent did not have the qualification to hold the post of Lecturer.

The question to be considered is what is the relevant and applicable qualification for appointment as principal of an aided degree college and whether Ph.D is a preferential qualification for such appointment. In G.O.Ms.No.158, the 1997 rules for selection of persons, for appointment to the posts of teachers, by the A.P. College Service Commission, were issued by the State Government in exercise of powers under Sections 8 and 19 of the A.P. College Service Commission Act,1985 ( AP Act13/85). These rules were applicable to all Colleges affiliated, associated with or recognized by any university, including all aided colleges. As per the table appended to these Rules the method of recruitment to the post of Principals of Degree College is by transfer from among qualified, eligible and suitable Lecturers of the College and in the absence of such lecturers, by direct recruitment.

G.O.Ms.No.158 also prescribed qualifications for appointment to the post of Principals. Accordingly, a consistently good academic record with first or high second class ( B+) at Master's Degree and M.Phil or a recognized degree beyond the Masters' level or a published work indicating the capacity of the candidates for independent research work, are the prescribed qualification. It was also provided that other things being equal, preference should be given to candidates having a Ph.D. qualification. By a subsequent G.O.Ms.No.131, dated 29-05-1990 an explanation/exception was issued/made to the effect that Lecturers appointed prior to 01-04-1976 are deemed to have been exempted from the qualifications initially prescribed. The amendment stipulated that such exempted Lecturers should however possess 1st or 2nd Class Degree in Post-graduation or in Graduation (Honours). The Commissioner of Collegiate Education in his letter dated 12-06-1997 clarified that weightage for Ph.D is not provided for; that 55% marks in P.G.Course need not be insisted upon from the category of Lecturers appointed prior to 01-04-1976; and the date of joining in the Degree College alone should be considered for fixing seniority.

It also requires to be noticed that by Act 22 of 1990 recruitment of staff of private colleges was excluded from the purview of A.P.College Service Commission and thereafter separate orders were issued by the Government for recruitment of teaching and non-teaching staff of private colleges. In G.O.Ms.No.119, Education Department, dated 22-03-1991 orders were issued regarding constitution of selection committees for filling up vacancies in private colleges which were not notified for recruitment by the College Service Commission prior to the coming into force of the amendment Act, 1990. Correspondents of private colleges except of minority institutions were also informed that separate orders would be issued prescribing the procedure for selection of teaching staff and that till then the managements should not resort to recruitment. The composition of the selection committee as prescribed inG.O.Ms.No.119 not being relevant to the issues arising in this writ petition, need not therefore be considered herein.

In G.O.Ms.No.12 Education Department dated 10-01-1992 the procedure for selection of lectures and junior lectures was specified. Thereafter in G.O.Ms.No.127, Education Department dated 07-06-1993 amendments were issued to G.O.Ms.No.12. The amendments specified that the selection committee constituted under G.O.Ms.No.119, dated 22-03-1991 in respect of each college shall also act as

the promotion committee for approval of the panel of the names, for appointment by transfer as Principal of the Degree colleges from among lecturers and readers. These amendments ordain further that presence of a Government representative, University representative and A.P. College Service Commission representative is essential for completing the quorum of the selection committee. It was also specified that the post of Principal of Degree College shall be filled by recruitment by transfer from among the eligible, qualified and suitable Lecturers with 10 years of service under the same management and that in the absence of such Lecturers the post of Principal should be filled by direct recruitment. By the amendments (in Rule-10) it was ordained that a panel shall be prepared every year for each category of posts, that the correspondent of every private college should certify that the name of no qualified candidate has been omitted on the ground that he considered such candidate unfit or not fit for appointment and that the names of all qualified candidates have been included in the list, and that the correspondents should provide the committee (the selection committee constituted as per G.O.Ms.No.127) with the seniority list of candidates, their personal files including Confidential Reports for the last ten(10) years, with certificates of the prescribed qualifications, marks list of each candidates and other specified particulars. It was also ordained that the promotion committee shall scrutinize the personal files, the seniority etc., and after assessing the suitability of the candidates the committee should approve the list of names in the order of seniority and merit to the extent of vacancies.

It would appear that the Association of Affiliated College Teachers and Junior College Teachers' Association, of private degree and junior colleges represented to the Government for clarification as to the filling up of the post of Principal by promotion of senior most Lecturers and Junior Lecturers. The association also appears to have requested the Government to clarify to the effect that only senior most Lecturers or Junior Lecturers be kept in charge whenever a vacancy arises and while considering promotion to the post of Principal *inter alia* in private degree colleges the first three names be considered. Responding to such representation the State Government in Memo No.89/CE-III-1/95-1, dated 27-01-1995 issued a clarification informing the Commissioner of College Education that the procedure for selection prescribed in G.O.Ms.Nos.158, 119, 12 and 127 should be followed for appointment of principals by promotion from among the Lecturers in Private aided colleges and that the first three senior most Lecturers only be considered for filling up the post of Principal and that till a regular appointment is made one of the three

senior most Lecturers be kept in charge of a vacant post of Principal. The Commissioner of College Education was also directed to issue suitable and necessary instructions to effectuate this direction.

Sri Jogayya Sarma learned counsel for the petitioner contends that in view of the Government Memo No. 9 dt 27.1.1995, the procedures and qualifications specified in G.O.Ms.No. 158 must be followed and the preference for a doctoral qualification must be considered as having been reaffirmed not withstanding that the orders inG.O.Ms.No.158 ceased to apply to private colleges after exclusion of such colleges from the purview of Andhra Pradesh College Service Commission, in view of A.P.Act 22/1990.

In the considered view of this Court the above submission does not commend acceptance. The clarification issued by the Government is by a mere memo. Such an instrument can neither amend nor does in fact appear or purport to amend the orders issued in the several earlier G.Os, which have been referred to earlier. The clarification, it must be noted, was issued in the context of a representation by Teachers Associations. The representations were of a limited nature namely, that three senior most lecturers should be considered while filling up of the post of Principal and the senior most of such Lecturer must be kept in charge if the post of Principal could not be filled up on a regular basis. It is in the context of such a representation that the Memo instructed the Commissioner of Collegiate Education that the procedure prescribed in the four specified G.Os must be followed for appointment of principal. In G.O.Ms.No.158, no doubt a Ph.D qualification was prescribed as preferential qualification for appointment to the post of Principal of Degree college. Subsequently the State Government in a Memo dated 22-06-1999 clarified that for recruitment to the post of Government Degree college by promotion from the category of Lecturers, Lecturers appointed prior to 1-4-76 must be deemed to have been exempted from possessing the qualification prescribed in G.O.Ms.No.1072 and their claims for appointments as Principal must be processed with reference to the special rules for the A.P.Educational Service. As per those rules, the qualification required for the post of Principal is possession of First or Second Class Master' Degree or a Graduate (Honours) Degree of a University in that State. Responding to a suggestion of the Secretary of the College Service

Commission that the above instructions (Memo dated 22-06-1989) could as well be made applicable to filling up of the post of the Principal in private degree colleges, the State Government had issued orders inG.O.Ms.No.131, Education Department dated 22-09-1990. These orders incorporated amendments to the rules relating to selection of persons by the A.P.College Service Commission for appointment to the posts of Teachers and were issued in exercise of powers conferred on the Government under Sec.8, read with Sec.19 of the A.P.College Service Commission Act, 1985. By this amendment, Lecturers appointed prior to 01-04-1976 were exempted from possession of the qualifications prescribed in items 1 and 2 in Rule 5 in the table. In effect those Lecturers appointed prior to 01-05-1976 are required to possess a First or Second Class P.G degree or a Graduate (Honours) degree of any University in the State. As a consequence of A.P.Act,22/1990, with private colleges excluded from the purview of the A.P.College Service Commission, the prescriptions in G.O.Ms.No.158 and G.O.Ms.No.131 were applicable to recruitment of the teaching staff of such excluded colleges. These colleges were now governed by orders issued by the State Government in G.O.Ms.Nos.119, 12 and 127 dated 23-03-1991,10-01-1992 and 07-06-1993 respectively.

On an analysis of the several instruments, statutory and non-statutory, the legislative developments and the clarifications issued, this Court is of the considered view that the preference accorded to Ph.D qualified lecturers for appointment to the post of Principal inG.O.Ms.No.158 is not applicable for the post of Principals in private degree colleges, which are excluded from the purview of the A.P.College Service Commission after A.P.Act 22/1990. In coming to this conclusion this Court has considered the fact that Memo No.89, dated 27-01-1995 is in the nature of a clarificatory note of instructions addressed *inter alia* to the Commissioner of College Education. Its contents cannot be considered with the same vigor nor its language analysed with the same intensity, as would a statutory instrument. Memo No.89 is in the nature of an inter-departmental instruction, issued to effectuate the operation of the statutory rules and is neither capable of nor is intended to be an independent prescription of qualifications. Revitalization of the Government Orders in G.O.Ms.No.158 which had ceased to apply to private colleges in view of the A.P Act 22/1990, were clearly not the mission, purpose or intendment of this Government Memo. Consequently a Ph.D qualification cannot be considered a preferential qualification for appointment to the post of Principal in private degree colleges.

**ISSUE NO.3**

The petitioner's case is that selection for appointment to the post of principal of an aided degree College must be exclusively merit based. In G.O.Ms.No.119 Education Department dated 22-03-1991 orders were issued by the Government specifying the constitution and composition of selection committee for filling up vacancies in private colleges not notified for recruitment to the A.P. College Service Commission. In view of the A.P. College Service Commission (Amendment Act) 1990 the procedure for selection of Lecturers and Junior Lecturers in private degree-junior colleges has been prescribed by the orders in G.O.Ms.No.12, Education Department dated 10-01-1992. In G.O.Ms.No.127 Education Department dated 07-06-1993 amendments were issued to the orders in G.O.Ms.No.12. By these amendments, the post of principal of Degree College is required to be filled by recruitment by transfer, from among the eligible qualified and suitable Lecturers with 10 years of service under the same management and in the absence of such qualified Lecturers by direct recruitment. Para 10 of G.O.Ms.No.127 specifies that a panel be prepared every year; that the Correspondent of every private college ensure that the name of no qualified candidate is omitted for consideration for appointment and should also furnish a certificate that the names of all qualified candidates have been included in the list; that the Correspondent should give a certificate to the effect that the seniority list of candidates has been circulated to them and that no representation is received from them against the seniority as fixed by the management; and that the Correspondent should provide the selection committee with the seniority list of candidates, their personal files comprising their confidential reports at least for the previous ten(10) years, files pertaining to charges if any, certificates of required qualifications and the mark lists of each candidate. Para 10 also specifies that the promotion committee should scrutinize the personal files, qualifications, seniority list and after assessing the suitability of the candidate shall approve the list of names in the order of seniority and merit to the extent of vacancies.

When recruitment to the teaching posts including of principals in private aided degree colleges was within the purview of A.P.College Service Commission, the rules issued in G.O.Ms.No.158 Education Department dated 10-06-1987 governed the field. These rules prescribed the qualifications, experience, and method of recruitment to the post of principal of degree College. Private degree colleges were excluded from the purview of the A.P.College Service Commission consequent on

the amendment by the A.P.College Service Commission (Amendment) Act,1990. It requires to be noticed that consequent on the A.P.College Service Commission (Repeal) Act,2001, the State Government in a memo dated 16-08-2001 has repealed the A.P.College Service (Selection of persons for appointment to the post of Teachers) Rules 1987 issued in G.O.Ms.No.158 dated 10-06-1987 and with effect from 26-05-2001. Therefore whether the post of principal of a private degree College should be filled up exclusively on the basis of seniority or by a selection process, appears determinable only by reference to the instructions contained in the Government order in G.O.Ms.No.127 Education Department dated 07-06-1993. It also requires to be placed on record that no other instrument, rule or Government order is placed before this Court which spells out the methodology, substantive and procedural to be applied and adopted while making appointments to the post of principal of a private degree College, except the Government orders in G.O.Ms.No.127. In view of the provisions of paragraph 10(d) of G.O.Ms.No.127 in particular and the general tenor of the instructions in the said G.O, it is permissible to infer that seniority is not the exclusive criterion for considering an appointment to the post of a principal in a private degree College. According to these orders a promotion committee is constituted for appointment by transfer to the post of principal of degree College which is required to approve a panel of names for such appointment from among the eligible, qualified and suitable Lecturers with 10 years of service under the same management and in the absence of such qualified and eligible lecturers by direct recruitment (Para 3 of G.O.Ms.No.127). Para 10(d) of these instructions requires the promotion committee to scrutinize the personal files qualifications and seniority; to assess the suitability of candidate and then approve the list of names in the order of seniority and merit to the extent of vacancies. Clearly therefore, as far, as such clarity is deducible from the plethora of successive administrative instructions and employment of unrefined language in such instructions, it appears that the post of principal of a private degree College is to be filled up by a process of selection whereat personal files, qualifications and seniority are all relevant components for assessing the suitability of candidates by the promotions committee. Neither seniority nor qualifications are exclusive detriment factors in the assessment of such suitability. While approving the list of names however the promotion committee is required to arrange the names (in the approved list) in the order of seniority and merit to the extent of vacancies (Para 10(d) of G.O.Ms.No.127).

In a judgment dated 29-11-1995 in W.P.Nos.6357 of 1991 and 13940 of 1994, a learned single Judge of this Court has held that in view of the orders in G.O.Ms.Nos.127 dated 07-06-1990, and 777 dated 07-05-1994 the post of a principal of private degree college is a selection post and the criterion is merit-cum-seniority, seniority being considered where merit is approximately equal.

At the hearing of this writ petition it is not brought to the notice of this Court whether any appeal has been preferred against the aforesaid judgment. Even *de hors* the decision referred to above on the basis of the Government orders issued in G.O.Ms.No.127, the position appears to be that the post of principal of a private degree college is a selection post to be filled up on the basis of merit-cum-seniority, by recruitment by transfer from amongst eligible qualified and suitable Lecturers with 10 years of service under the same management.

The rules issued in G.O.Ms.No.158 are not applicable for considering recruitment-appointment to the post of principal of a private degree College as already analyzed. Therefore no preference is available for candidates holding a Ph.D degree, Such a preference was a mandate of G.O.Ms.No.158, which ceased to apply private degree colleges.

Therefore on issue No.3 the conclusion is that merit-cum-seniority is the principle governing appointment to the post of principal of a private degree college.

**ISSUE NO.4**

On behalf of the petitioner it is contended on this issue that the selection committee/promotion committee of the 1st respondent-College was required to record reasons for selecting the 5th respondent while overlooking the petitioner. On behalf of the 5th respondent it is contended and this contention is also echoed by the learned counsel for the other respondents, that in the absence of any statutory prescription requiring selection authorities to record reasons, no such requirement exists as an empirical principle of administrative law.

The petitioner's contention that reasons ought to be recorded proceeds primarily on the basis that the petitioner is senior to the 5th respondent and the selection and appointment of the 5th respondent as the principal of the 1st respondent degree

college constitutes a supersession of the legitimate claims of the petitioner for such appointment based on the petitioner's seniority over the 5th respondent. The factual assumption underlying this contention is misplaced. Admittedly and demonstrably the 5th respondent is senior to the petitioner in the category of Lecturers of the 1st respondent college. Such seniority of the 5th respondent over the petitioner is not the challenge in this writ petition. Therefore the appointment of the 5th respondent as principal of the 1st respondent College would not tantamount to supersession of any seniority claims of the petitioner. Had the petitioner been senior to the 5th respondent, perhaps the principle enunciated by the Supreme Court in **Union of India Vs. M.L.Capoor()** could have been applicable to infer an obligation that the selection committee-promotion committee must record reasons while superceding the claims of the senior. This is also only if the post of principal of a private degree college were a seniority post. As clearly the post is a selection post and the petitioner is also junior to the 5th respondent, the principle in ***M.L.Capoor*** case supra would not apply.

The petitioner has not pleaded that the selection committee was either biased or had acted arbitrarily in selecting the 5th respondent as principal of the 1st respondent college.

Much has been contended on behalf of the petitioner as to the superior academic qualifications and other experience of the petitioner vis-à-vis the 5th respondent. It is not the province of this Court to reassess or sit an appeal over the judgment and evaluation of the relative eligibility of the petitioner and the 5th respondent or for judging suitability for appointment to the post of principal of the 1st respondent college. That area is primarily within the province of the promotions committee and this Court does not sit in appeal over the expert evaluation of the relative merits of the petitioner and the 5th respondent as arrived at by the promotions committee.

For all the aforesaid reasons this Court finds no merit in the writ petition.

The writ petition is accordingly dismissed. But in the circumstances without costs.

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**GODA RAGHURAM,J**

__ JANUARY 2006

PVSN/*TSNR